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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re: Patent Application for Dale, et al **Dated:** Dec 26, 2008
Serial No.: 10/563,779 **Art Unit:**
Filed: January 6, 2006 **Examiner**
For: A Method of Selectively
Producing male or Female Sterile
Plants **Action:** Election and Traversal

To: Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450

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**Amendment
(Election and Traversal)**

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Re:	Patent Application for Dale, et al	Dated:	Dec. 26, 2008
Serial No.:	10/563,779	Art Unit:	
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For:	A Method of Selectively Producing male or Female Sterile Plants	Action:	Election and Traversal

Election and Traversal

The Applicant and the Examiner appear to be using a different set of Claims in this application. On the PAIRS site it appears that the preliminary amendment to the claims of January 6, 2006 should be the set of claims that are active in this file. Claim 15 has been amended to depend from only one claim. If the Applicant is correct then with the amendment the improper multiple dependent objection to claims 5-9 and 15 should all be withdrawn. Action to that effect is requested.

The Examiner has restricted the remaining claims into only one group I (excluding 5-9 and 15), drawn to a method of producing male or female sterile plants comprising the steps of transforming plant material with a polynucleotide which encodes at least one enzyme which reacts with a non-phytotoxic substance to produce a phytotoxic one, wherein the oxidase is a mutant D-amino acid oxidase from Rhodotorula and the non phytotoxic substance is a D-alpha amino acid or peptide derivative thereof as well as a mutant D-amino acid oxidase from Rhodotorula capable of oxidizing Phosphinothricin.

The Examiner indicated that Under PCT Rule 13.1 there are 5 species within this group. The Examiner is requiring not that one species group be selected but that a single species must be selected from each of the species groups. Thus the applicant elects

from species group 1- a herbicide; elects from group 2 direct; elects from group 3 D-asparate; elects from group 4 amino acid change at position 213; and elects from the last group residue change that 213 is serine. All such elections are with traverse. The claims that read on these species are claims: 1, and 18 and if necessary these claims are hereby elected and the remaining claims if necessary are withdrawn from consideration.

The examiner indicates that claims 1, 4, 11 and 12 are generic (again without reference to the claims 5-9 and 15).

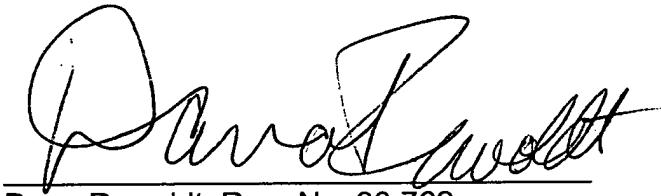
Traversal

The claims are all linked by a single form of a single general inventive concept under 13.1 and PCT rule 13.1. The alleged species should not be separated out under 13.3 and definitely fit the unity of invention as defined under 13.4 Subject to Rule 13.1, it shall be permitted to include in the same internal application a reasonable number of dependent claims, claiming specific forms of the invention claimed in an independent claims, even where the features of a dependent claim could be considered as constituting in themselves an invention.

Additionally, the Examiner is stating that the claims are species because the chemicals or residues or proteins have distinct structures. Claim two is referencing adding some additionally mixtures to the generic claim 1. This is not a part of a species. The activity that is required to form the phytotoxic product does not render the claim a species. The use of D-aspartate or D-glutamate does not make the compound less a part of the general claim, it is not a species. The election of claims 1-18 are made with Traversal. Newly added claim 18 is added. If there are additional costs for such claim or for any extensions of time the Applicant respectfully requests that these fees should be withdrawn from Acct. 07-0190.

The Examiner is kindly requested to review unity of invention on this case and allow all claims to be examined as each claim is linked by a single form of a single general inventive concept according to PCT 13.1. Action to this end is requested.

Respectfully submitted,



Dana Rewoldt, Reg. No. 33,762
Syngenta Seeds, Inc.
2369 330th Street, Box 500
Slater, IA 50244
(515) 685-5201



CERTIFICATE OF MAILING UNDER 37 C.F.R. 1.8

I hereby certify that the foregoing Election and Traversal for 10/563,779 is being mailed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on Dec. 26, 2008.

A handwritten signature in black ink, appearing to read "Anna Lewellen". A small circle is drawn around the initial "A".